

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, dismissing requests for State Director review as untimely filed.

Affirmed.

1. Rules of Practice: Appeals: Dismissal -- Rules of Practice: Appeals: Timely Filing

A request for review by a State Director of the Bureau of Land Management under 43 CFR 3165.3(b) is properly dismissed as untimely when it is filed more than 20 business days after the date a notice of violation or assessment or instruction, order, or decision issued under 43 CFR 3165.3(a) is received.

APPEARANCES: W. J. Charles, President, for Han-San, Inc.; Margaret C. Miller, Esq., Office of the Field Solicitor, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

On December 9, 1988, the Area Manager of the Farmington Resource Area, Bureau of Land Management (BLM), assessed Han-San, Inc., \$ 250 for failure to comply with Notice of Incidents of Noncompliance No. NM01989MK-09 ordering Han-San, Inc., to provide additional information on the permanent monument for an abandoned well in accordance with 43 CFR 3162.6(d). Han-San, Inc., received this letter via certified mail on December 19, 1988.

On January 4, 1989, BLM's Area Manager imposed civil penalties of \$ 255,000 for failure to comply with Notice of Incidents of Noncompliance No. NM-019-89-MK-08 ordering Han-San, Inc., to effectively seal two valves in accordance with 43 CFR 3162.7-4(a)(1) (1987) within 10 days of receipt of the notice on November 1, 1988. ^{1/} Han-San, Inc., received this letter via certified mail on January 9, 1989.

^{1/} The civil penalty was imposed in accordance with 43 CFR 3163.2(b), which imposes civil penalties at the rate of \$ 5,000 per day for violations not corrected within 40 days of notice in writing of the violation; Han-San, Inc., corrected the violation on Dec. 22, 1988.

Both BLM letters informed Han-San, Inc., of its right to request review by the State Director of BLM within 20 business days of their receipt, in accordance with 43 CFR 3165.3.

On February 16, 1989, Han-San, Inc., filed a "notice of appeal" from each letter. On March 2, 1989, the Deputy State Director for Mineral Resources dismissed the requests for review as untimely filed. Han-San, Inc., received this decision on March 3, 1989. On the same date it filed a "statement of facts" with BLM. BLM treated this document as an appeal from its March 2, 1989, decision, and forwarded the files to the Board, although BLM's subsequent answer acknowledges that it may have been intended as a statement in support of its request for State Director review.

[1] The regulation involved, 43 CFR 3165.3, was amended in 1987. See San Juan Citizens Alliance, 104 IBLA 288 (1988). 43 CFR 3165.3(b) now provides in part:

(b) State Director review. Any adversely affected party that contests a notice of violation or assessment or an instruction, order, or decision of the authorized officer issued under the regulations in this part, may request an administrative review, before the State Director, either with or without oral presentation. Such request, including all supporting documentation, shall be filed in writing with the appropriate State Director within 20 business days of the date such notice of violation or assessment or instruction, order, or decision was received or considered to have been received * * *. 2/ Upon request and showing of good cause, an extension for submitting supporting data may be granted by the State Director. [Emphasis added.]

In analogous circumstances, namely, when a notice of appeal to the Director of the Geological Survey has been filed with the Director after the 30 days from date of service allowed by 30 CFR 290.3(a), we have consistently held that the failure to file a notice of appeal within the 30-day time period properly results in dismissal of the appeal. See Pennzoil Oil & Gas, Inc., 61 IBLA 308 (1982); Texaco, Inc., 51 IBLA 243 (1980); Mesa Petroleum Co., 44 IBLA 165 (1979). We believe a similar rule should apply to a request for review under 43 CFR 3165.3(b), when, as here, neither of Han-San, Inc.'s, requests was filed within 20 business days of its receipt of BLM's letters. The requests were both untimely, and were both therefore properly dismissed.

2/ 43 CFR 3165.3(a) provides in part: "Written orders or a notice of violation, assessment, or proposed penalty shall be issued and served by personal service by an authorized officer or by certified mail. Service shall be deemed to occur when received or 7 business days after the date it is mailed, whichever is earlier."

Therefore, in accordance with the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the March 2, 1989, decision of BLM is affirmed.

Will A. Irwin
Administrative Judge

I concur:

Franklin D. Arness
Administrative Judge.

